

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PETER L.,

Claimant,

v.

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

OAH No. 2012020332

A Proceeding Under the
Lanterman Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Santa Ana on March 22, 2012. Regional Center of Orange County was represented by Paula Noden, Fair Hearing Manager. Claimant Peter L. was present and represented by Tanya Martino, a family friend. Claimant's mother was also present.

Regional Center of Orange County presented Exhibits A – J, the testimony of the chief counselor, service coordinator, and area supervisor, and the argument of the Fair Hearing Manager. Claimant Peter L. presented Exhibits 1 – 9, the testimony of claimant, his mother, program coordinator from claimant's day program, and a family friend, and argument by his representative. The parties' exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

Documentary and oral evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on March 22, 2012, and finds as follows:

ISSUE

The issue presented for decision is whether claimant Peter L. should receive an increase in personal assistance hours.

FACTUAL FINDINGS

1. Claimant Peter L. was born on March 3, 1974, and is 38 years old. He is a consumer of and eligible for services from the Regional Center of Orange County (Service Agency) based on his diagnosis of moderate mental retardation. He lives with his elderly parents in the family home in Dana Point.

2. From the Service Agency, claimant receives 24 hours monthly in parent-vendored respite, day program services five days per week at the Vocational Visions Adult Developmental Center (Vocational Visions), transportation, and 40 hours monthly in personal assistance services. He also receives Supplemental Security Income and 272 hours monthly of In-Home Supportive Services (IHSS).

3. In addition to his eligible diagnosis, claimant has been diagnosed with severe emotional disorder, schizophrenia undifferentiated type, and autism. He has very limited speech abilities. He is able to follow simple verbal directions and prompts and respond to simple questions with one word answers. His speech is difficult to understand. Claimant likes to initiate conversations and has a good sense of humor but is unable to carry on conversations. He is ambulatory but lacks safety awareness. If he is not supervised, claimant will walk unsuspectingly on broken glass, cross a street, and elope. For example, on one occasion, claimant ran away from home to a neighbor's house.

4. Claimant is incapable of caring for his own needs. He requires the assistance of others for most of his daily living and self-help tasks. He can drink and eat on his own but his food must be prepared for him and cut into small pieces. He tends to swallow or gulp down liquids and food. He is dependent on others to bathe and dress, take medications, transportation, and toileting. Claimant can use the restroom but needs prompts or reminders to wash and dry his hands and to close his pants. He is not fully toilet trained and has accidents while sleeping and going out in the community. According to this mother, he refuses to use incontinent supplies. Due to his medications, claimant has been having more problems lately controlling his urination and bowel movements.

5. Claimant's mother and father are very involved in trying to ensure that their adult son receives services and supervision. His father is the provider of the IHSS hours. He drives claimant to Vocational Visions in the mornings so that he does not have an accident enroute to his day program and takes his son to activities in the community. Claimant's mother assists him with all of his activities of daily living. His parents also have a number of good family friends who will watch claimant and take him on outings when the parents need a respite or are unable to do so despite the difficulties supervising him due to his incontinence. One family friend frequently invites claimant to come to her house but claimant does not like to sleep or stay there for a long time and prefers to go home. Claimant likes to go to walk, swim,

watch television, listen to the radio, spend time with family and family friends, and go to Chuck E. Cheese's amusement center and restaurant for children.

6. In the areas of social interaction and behaviors, claimant is learning to initiate contact with peers but prefers solitary activities. When asked to perform a non-preferred activity, claimant is resistive and will engage in emotional outbursts, act aggressively, or wander away. At least once a month, he will yell and scream at home until he gets what he wants, which might be food or to go outside. In the community, claimant likes to go to Chuck E. Cheese's and the park but he likes to play or interact with very young girls, which makes some of their parents uncomfortable since claimant is a grown man. On occasion, claimant will mistakenly enter the women's restroom. His mother has reported that claimant has responded well to applied behavioral management techniques. On the other hand, she also testified that claimant and the family have not received behavioral services in several years.

7. Claimant is doing well at the adult day program at Vocational Visions. He is able to call out names of persons that he knows, start interactions with staff and peers, and respond to questions and greetings. On occasion, he displays unacceptable social behaviors. He requires prompts and directions from the day program staff to initiate activities and to complete personal care tasks. He gets along well with his job coach and has made progress towards his goals in behavior and community integration. Vocational Visions staff members are working with claimant to improve his ability to follow directions, consistently identify the men's restroom and not enter the women's restroom, and to gain personal safety awareness. In a March 2001 assessment, Vocational Visions staff reported that claimant's changing mood affects his attitude and willingness to participate in activities and to follow directions. He has become less talkative in the past few years and does not initiate conversations as much as before. Both the Service Agency and Vocational Visions staff believe that the adult day program is appropriate for claimant's needs inasmuch as he receives constant supervision and enjoys the activities.

8. On December 6, 2011, claimant's mother and representative met with his service coordinator and program supervisor to discuss his services. His mother complained that claimant requires constant supervision because he does not sleep through the night or chew his food. He continues to run away and lacks awareness of dangers at home and in the community. Claimant's mother added that she needs help in taking her son to his dental appointments. Claimant's mother requested an increase of personal assistance hours from 40 hours per month to 59 hours per week so that she can hire someone to help supervise claimant. It was not established how claimant's parents use the personal assistance hours or who they hire to provide the service.

9. On January 6, 2012, the Service Agency denied the request of claimant's parents for an increase in monthly personal assistance hours. The denial of their request or notice of proposed action was not mailed to claimant in timely

manner. Nevertheless, a Fair Hearing Request was filed on behalf of claimant to contest the Service Agency's action.

10. (A) On January 12, 2012, the Service Agency increased claimant's respite hours from 20 to 24 hours per month. Under the Purchase of Services form, the Service Agency noted that claimant displays severe behaviors including elopement and aggressiveness, and cannot be left alone.

(B) On March 16, 2012, the Service Agency re-authorized the provision to claimant of 40 hours per month of personal assistance as a supportive service. In an April 5, 2011 Purchase of Service form, the Service Agency noted that claimant's behaviors mandate that he have someone with him at all times so that he can remain safe. Service Agency staff also noted that claimant's parents are aging and need extra support to continue to care for him in their home and that the cost of personal assistance at \$8.90 per hour was less than the cost of residential placement.

11. Claimant's parents are getting older and having a more difficult time caring for and supervising their son, who is a healthy and strong man. His mother is 59 years old and recently suffered a fracture of her left elbow. His father is 65 years old and has been diagnosed with bladder cancer. The parents want to continue to have claimant living at home.

12. In the event that claimant were to be placed in a group home or household of another person where he would receive his appropriate level of care, the Service Agency demonstrated the monthly residential rate would be \$3,825. The Service Agency would pay \$2,864 of this amount and the difference would have come from claimant's monthly SSI payment. At the facility, there would be one caregiver for every three residents and two caregivers present in the group home or household at all times. Claimant's parents do not want their son to be placed in a facility.

13. Claimant is also eligible for "empty bed" respite under which he may stay in an out-of-home living situation for 21 days per year. By taking advantage of empty bed respite, claimant would get used to different living situations and his parents would receive the benefits of a true respite from their caregiving duties.

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community

settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)¹

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) Services and supports may include training, education, recreation, behavior training, daily living skills training, community integration services, community support, and social skills training. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that the regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

2. Discussion--In the present appeal, the personal assistance services provided to claimant are a permissible service under the Lanterman Act and an essential service for claimant to be able to continue to live in the least restrictive and preferred setting, which is his parents' home. His parents need the personal assistance hours in conjunction with the IHSS and respite hours to provide a home for claimant, supervise him at home and in community and to take him to his appointments and day program. There is no dispute that claimant needs constant supervision, for he lacks safety awareness, tends to elope, is incontinent, and presents behavioral challenges. His tendency to accidentally go into the wrong restroom and

¹ Further section references are to the Welfare and Institutions Code unless indicated otherwise.

his penchant for playing with young girls in public settings require strict direction and oversight.

However, while preference should be given to the choice of claimant and his parent that he continue to live at home, the Lanterman Act requires consideration of available generic resources and the cost effectiveness of services. Here, it is not cost effective for the Service Agency to provide 55 or 59 hours per week of personal assistance which would be tantamount to claimant receiving 24-hour care when taking into account his IHSS, day program, and respite hours. The parents should consider use of empty bed respite so that they may receive the benefits of respite and claimant can be slowly acclimated to living in new situations. They should also consider asking for behavioral and/or daily living skills training for claimant so that caring for him can become less arduous. Based on Findings 1 – 13, however, because the Service Agency has recognized that claimant's parents do need more support as shown by its increasing claimant's respite hours, the evidence supports the conclusion that his personal assistance hours should be increased by a similar proportion amount and will thus remain a cost-effective service.

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal of claimant Peter L. from the determination of the Regional Center of Orange County to deny an increase in personal assistance hours is granted, in part. Claimant Peter L. shall receive 50 hours per month of personal assistance services from Regional Center of Orange County.

Dated: March 30, 2012

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.